**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH, NAGPUR**

**Second Appeal No. 587/2004**

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**Notes, Office Memoranda of** Coram, appearances, Court's orders or directions and Registrar's orders. | **Court's or Judge's Orders.**

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**CORAM** : **A.P. Lavande,J**
**DATE : 22th November, 2006**

Heard Mr. Paliwal, the learned counsel for the appellant.

2. By this appeal, the appellant takes exception to the Judgment and decree dated 9th July, 2004 passed by the First Ad hoc Additional District Judge, Buldana in Regular Civil Appeal No. 36/98 dismissing the appeal filed by the appellant/ plaintiff against the Judgment and decree dated 3.3.1998 passed by the Civil Judge, Junior Division, Mehkar in Regular Civil Suit No. 2/96.

3. The plaintiff filed the above suit for declaration and possession against the defendants- respondents on the ground that Rukhminibai who was the owner of the suit property by will dated 12.7.1989 bequeathed the suit property to the plaintiff. The defendants contested the suit on the ground that Rukhminibai by registered will dated 15.6.1966 had bequeathed the suit property in favour of

Damu Punjaji Dukre defendant no.1. Admittedly, the suit property was transferred by the defendants in favour of one Mr. Shivaji Kundlik Marole even prior to filing of the suit who admittedly was in possession of the suit property on the date of filing of the suit. The trial court as well as the lower appellate Court held that the will dated 12.7.1989 which is alleged by the plaintiff to have been executed by Rukhminibai in his favour was not a will executed by free will by the testator. The trial court gave this finding on the basis of several circumstances which threw doubt on the genuineness of the will. The lower appellate court also concurred with the finding given by the trial court and dismissed the appeal.

The plaintiff has been non-suited on one more ground and that is the possession of the suit property is with Shivaji who has not been made party to the suit. Mr. Paliwal, the learned counsel for the appellant submitted that both the courts below have erred in holding that the will executed by Rukhminibai in favour of the appellant was suspicious and further erred in holding that the will executed in favour of the defendant no.1 was genuine one. He has further submitted that the findings recorded by both the courts below against the plaintiff are perverse.

Mr. Wankhede, the learned counsel appearing for the respondent supported the decrees passed by both the courts below.

Having considered the submissions made by the lower court and having perused the Judgments passed by the courts below, I do not find any merit in any of the submissions made by Mr. Paliwal. Perusal of the Judgments passed by both the courts below discloses that the findings recorded are borne out from the evidence on record. It cannot be said that the trial court has erred in holding that no reliance could be placed on the will dated 12.7.1989 executed by Rukhminibai in favour of the plaintiff for the various reasons mentioned in the Judgment. Once the will was not accepted by the trial court and a finding was recorded that Shivaji Marole was in possession of the suit property, the trial court was justified in dismissing the suit filed by the plaintiff. No fault can be found with the decree passed by the trial court and the Judgment and decree passed by the lower appellate Court. There are concurrent findings of fact by both the courts. No substantial question of law is involved in the appeal. Hence, the appeal is rejected.

**Judge**

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